

**R315. Environmental Quality, Solid and Hazardous Waste.**

**R315-309. Financial Assurance.**

**R315-309-3. General Requirements for Financial Assurance Mechanisms.**

(1) Any financial assurance mechanism in place for a solid waste facility:

(a) must be legally valid, binding, and enforceable under Utah and Federal law;

(b) must ensure that funds will be available in a timely fashion when needed; and

(c) any financial assurance mechanism that guarantees payment rather than performance, but does not allow the Executive Secretary to approve partial payments to a third party, shall establish a standby trust at the time the financial assurance mechanism is established.

(i) In the case of a financial assurance mechanism for which the establishment of a standby trust is required, the standby trust fund shall meet the requirements of Subsections R315-309-4(1), (2), and (4).

(ii) Payments from the financial assurance mechanism shall be deposited directly into the standby trust fund and payments from the standby trust fund must be approved by the Executive Secretary and the trustee.

(2) The owner or operator of a solid waste facility that is required to provide financial assurance:

(a) shall submit the required documentation of the financial assurance mechanism to the Executive Secretary; ~~[-and]~~

(b) prior to the financial assurance mechanism becoming effective and active for a solid waste facility, the mechanism must be approved by the Executive Secretary; ~~and[-]~~

(c) Financial assurance mechanism documents submitted to the Executive Secretary shall be signed originals or signed duplicate originals.

***Documents submitted to the Executive Secretary Must be originals to ensure that these important documents are valid.***

(3) The owner or operator of a solid waste facility may establish financial assurance by any mechanism that meets the requirements of Subsection R315-309-1(1) as approved by the Executive Secretary.

(4) The owner or operator of a solid waste facility may establish financial assurance by a combination of mechanisms that together meet the requirements of Subsection R315-309-1(1) as approved by the Executive Secretary. Except for the conditions specified in Subsection R315-309-8(6)(c), financial assurance mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments.

**R315-309-4. Trust Fund.**

(1) The owner or operator of a solid waste facility may establish a trust fund and appoint a trustee as a financial assurance mechanism. The trust fund and trustee must be with an entity that has the authority to establish trust funds and act as a trustee and whose operations are regulated and examined by a Federal or state agency.

(2) The owner or operator shall submit a signed original of the trust agreement to the Executive Secretary for approval and shall place a signed original of the trust agreement in the operating record of the solid waste disposal facility.

(3) Payments into the trust fund must be made annually by the owner or operator according to the following schedule:

(a) for a trust fund for closure and post-closure care, annual payments that will ensure the availability of sufficient funds within [five]the initial permit term or the remaining life of the facility, whichever is shorter [years of permit approval] for the cost estimates required in Subsection R315-309-2(3). The initial payment into the trust fund must be made, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste and for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3) (a); or

***Language is changed to conform to Federal language and takes into account the change in the permit life from five to ten years***

(b) for a trust fund for corrective action, annual payments that will ensure the availability of sufficient funds within one-half of the estimated length in years of the corrective action program for the cost estimate required by Subsection R315-309-2(5). The first payment shall be at least equal to one-half of the current cost estimate for the corrective action divided by one-half the estimated length of the corrective action program. The initial payment into the trust fund shall be made in accordance with the schedule specified in Subsection R315-309-1(3) (b).

(4) The owner or operator, or other person authorized to conduct closure, post-closure, or corrective action may request reimbursement from the trustee for closure, post-closure, or corrective action costs.

(a) Prior to the release of funds by the trustee, the request for reimbursement must be approved by the Executive Secretary. The Executive Secretary shall act upon the reimbursement request within 30 days of receiving the request.

(b) After receiving approval from the Executive Secretary, the request for reimbursement may be granted by the trustee only if sufficient funds are remaining to cover the remaining costs and if justification and documentation of the costs is placed in the operating record.

(c) The owner or operator shall notify the Executive Secretary that documentation for the reimbursement has been placed in the operating record and that the reimbursement has been received.

#### **R315-309-6. Insurance.**

(1) The owner or operator of a solid waste facility may provide insurance as a financial assurance mechanism. The insurance must be effective, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste or, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3).

(2) At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and the owner or operator must notify the Executive Secretary that a copy of the insurance policy has been placed in the operating record.

(3) The insurance policy must guarantee that funds will be available to close the facility or unit and provide post-closure care or provide corrective action, if applicable. The policy must also guarantee that the insurer will be responsible for paying out funds, as directed in writing by the Executive Secretary, to the owner or operator or other person authorized to conduct closure, post-closure, or corrective action, if applicable, up to an amount equal to the face amount of the policy.

**Clarifies that funds cannot be distributed without written approval of the Executive Secretary.**

(4) The insurance policy must be issued for a face amount at least equal to the closure, post-closure, or corrective action cost estimates required by Subsection R315-309-2(3) or Subsection R315-309-2(5), whichever is applicable.

(5) An owner or operator, or other authorized person may receive reimbursements for closure, post-closure, or corrective action, if applicable, if the remaining value of the policy is sufficient to cover the remaining costs of the work required and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the Executive Secretary that the documentation and justification for the reimbursement has been placed in the operating record and that the reimbursement has been received.

(6) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator.

(7) The insurance policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Executive Secretary 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance.

(8) The insurer shall certify through the use of an insurance endorsement specified by the Executive Secretary that the policy issued provides insurance covering closure costs, post-closure costs, or corrective action costs.

***This section makes it clear that the insurer must sign a statement on a form approved by the Executive Secretary giving the uses for which the insurance policy may be used. This is similar language to that used in Hazardous Waste and Used Oil financial assurance rules and the form is the same.***

**KEY: solid waste management, waste disposal**

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